STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 24, 2013
v	No. 310403 Ionia Circuit Court
MICHAEL ROBERT BRIDINGER, Defendant-Appellant.	LC No. 2011-015114-FH

Before: SERVITTO, P.J., and WHITBECK and OWENS, JJ.

PER CURIAM.

Defendant, Michael Robert Bridinger, appeals as of right his conviction, following a jury trial, of manufacturing marijuana.[1] We affirm because the trial court properly denied Bridinger's motion to suppress the seizure of his marijuana plants on the basis of the plain-view exception to the warrant requirements.

I. FACTS

Michigan State Police Trooper Brad Campbell testified that on May 5, 2011, he received a complaint from Brian Hetchler that his ex-girlfriend had stolen his vehicle and that it was located at Bridinger's residence. Trooper Campbell went to Bridinger's residence to investigate. Bridinger lives on a large lot that formerly was a pine tree farm. Jessica Morgan, one of Bridinger's friends, testified that Bridinger's driveway is about 100 yards long and terminates in a circular driveway in front of his residence. At the suppression hearing, Trooper Campbell testified that when he arrived at Bridinger's residence, Morgan and Robert Weber met him in the driveway.

According to Trooper Campbell, he questioned Morgan about a vehicle that was in the driveway, but he realized that it did not match the stolen vehicle's description. While he was speaking with Morgan and Weber, he saw a fresh set of tire tracks across the grass to the side of the residence and saw an eight-inch portion of the rear corner of a vehicle that was the color of the stolen vehicle. He approached it and determined that it was the vehicle that Hetchler had

[1] MCL 333.7401(2)(d)(*iii*) (less than 5 kilograms or fewer than 20 plants).

reported stolen. Trooper Campbell testified that he then went to "check the vehicle to see if anybody was in it . . . [and] that's when [he] observed marijuana plants on a table in the back yard of the residence." He picked up one of the plants and took it to the front of the residence.

Bridinger arrived while Trooper Campbell was questioning Morgan and Weber about the marijuana plants. He informed Trooper Campbell that there were more plants inside his residence. Bridinger consented to a search, and officers found additional marijuana plants inside the residence.

Bridinger moved to suppress the evidence, contending that it was the result of an illegal search. The circuit court found that Trooper Campbell was at the property for a lawful purpose and that his testimony that he saw a vehicle matching the description of the stolen vehicle was credible. It found that Trooper Campbell approached the stolen vehicle to investigate and saw the marijuana plants in plain view on the picnic table. It also found that there was no fence or "something of that nature" that Trooper Campbell had to enter to access the marijuana and that Bridinger had not asserted privacy in the back yard.

II. SUPPRESSION OF EVIDENCE

A. STANDARD OF REVIEW

This Court reviews for clear error a trial court's findings of fact at a suppression hearing and reviews de novo its conclusions of law.[2] The trial court's factual findings are clearly erroneous if, after reviewing the record, we are definitely and firmly convinced that the trial court made a mistake.[3]

B. LEGAL STANDARDS

Both the United States and Michigan constitutions "guarantee the right of persons to be secure against unreasonable searches and seizures."[4] If officers obtain evidence through an unreasonable search or seizure, it is not admissible as substantive evidence in a criminal proceeding.[5] To comply with this requirement, police officers must have a warrant to conduct a search or must establish that their conduct fell within an exception to the warrant requirement.[6]

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[2] *People v Unger*, 278 Mich App 210, 243; 749 NW2d 272 (2008).

[3] *People v Steele*, 292 Mich App 308, 313; 806 NW2d 753 (2011).

[4] *People v Kazmierczak*, 461 Mich 411, 417; 605 NW2d 667 (2000). See US Const, Am IV and Const 1963, art 1, § 11.

[5] *Mapp v Ohio*, 367 US 643, 655; 81 S Ct 1684; 6 L Ed 2d 1081 (1961); *Kazmierczak*, 461 Mich at 418.

[6] *Kazmierczak*, 461 Mich at 418.

C. APPLYING THE STANDARDS

Bridinger contends that Trooper Campbell was not lawfully present in his back yard when he seized the marijuana plants. We reject Bridinger's argument because Trooper Campbell lawfully seized the marijuana plants under the plain-view exception to the warrant requirement.

The plain-view exception allows a police officer to seize an item in his or her plain view if he or she views the item from a lawful position and the item's incriminating character is immediately apparent.[7] An item's incriminating character is immediately apparent if probable cause would exist to seize the item without conducting a search.[8] Probable cause exists when there is "a probability or substantial chance of criminal activity."[9]

Here, Trooper Campbell was in Bridinger's driveway when he observed the rear eight inches of a vehicle at the side of Bridinger's residence. At the time that Trooper Campbell observed the back corner of the vehicle, he knew that the victim of the theft had indicated that the vehicle was on Bridinger's property and that the vehicle's color matched that of the stolen vehicle. Under the circumstances, these facts indicated a substantial chance of criminal activity and Trooper Campbell had probable cause to lawfully seize the vehicle, which in turn put the marijuana plants in his plain view and led their seizure.

Bridinger contends that Trooper Campbell's seizure of the marijuana plants was illegal because it took place within the curtilage of his home. We conclude that whether Bridinger's back yard was within the curtilage of Bridinger's home has no bearing on this case. The Fourth Amendment protects against police entry into someone's home and, by extension, the curtilage of the home, in the absence of *a warrant or warrant exception*.[10] "[A] warrantless seizure by police of an item that comes within plain view during their lawful search of a private area may be reasonable under the Fourth Amendment," including when the intrusion that brought the police officer into the view of the evidence is supported by a warrant exception.[11] A mere visual inspection of something that comes into view during an officer's lawful search or seizure of something else does not constitute an independent search when it does not additionally invade the defendant's privacy interests.[12]

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[7] *People v Champion*, 452 Mich 92, 101; 549 NW2d 849 (1996).

[8] *Champion*, 452 Mich at 102-103.

[9] *Id*. at 111 n 11; *Illinois v Gates*, 462 US 213, 243-244 n 13; 103 S Ct 2317; 76 L Ed 2d 527 (1983).

[10] *United States v Dunn*, 480 US 294, 300; 107 S Ct 1134; 94 L Ed 2d 326 (1987); *Kazmierczak,* 461 Mich at 418.

[11] *Arizona v Hicks*, 480 US 321, 323; 107 S Ct 1149; 94 L Ed 2d 347 (1987); *Coolidge v New Hampshire*, 403 US 443, 465-471, 505-506, 521-522; 91 S Ct 2022; 29 L Ed 2d 564 (1971).

[12] See *Arizona*, 480 US at 325.

Here, Trooper Campbell testified that he saw the marijuana plants on the picnic table behind Bridinger's residence while he was moving around the vehicle to secure it. As explained above, the intrusion that brought Trooper Campbell into view of Bridinger's marijuana plants was supported by the plain-view warrant exception—therefore, he viewed Bridinger's marijuana plants from a lawful position. He did not conduct an additional search to discover the marijuana plants because they were clearly visible from his location near the stolen vehicle, and his glance toward Bridinger's back yard did not invade Bridinger's privacy interests in a greater way. Further, the plants' incriminating character was immediately apparent because Trooper Campbell had probable cause to believe that they indicated criminal activity. We conclude that the plain-view exception thus entitled Trooper Campbell to seize the marijuana plants.

We affirm.

/s/ Deborah A. Servitto
/s/ William C. Whitbeck
/s/ Donald S. Owens